IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.415 OF 1994.

Manager Parbhani Pamji Dept., Goa
& Anr. : Appellants.

versus

Haribai Anandrao Gaikwad & ors. : Respondents.

Mr.G.S.Hegade with Mr.A.R.Bhole for the appellants.
Mr.R.S.Ghadge for Respondent Nos. 1 to 5.

CORAM : D.G.DESHPANDE,J.

DATED : 6th April 2005.

ORAL ORDER

1. Heard Mr.Hegade for the appellants and Mr.Ghadge for the respondents/claimants. This appeal is filed against the order of the Motor Accident Claims Tribunal, Satara dated 16th December 1993 wherein the Opponent Nos. 1 to 3 were jointly and severally made liable to pay Rs.1,92,000/- including no fault liability to the

claimants with interest at the rate of 12% p.a.

2. Three persons were going by Java motor-cycle on 15th April 1987. The driver of the appellant's bus Datta Walwaikar was going from Goa to Pune. He was driving the bus bearing No.GDX 151. The speed of his bus was 50 to 55 k.m. per hour. He saw two bullock-carts coming from one after other from the other side i.e. from Pune side. Behind those bullock-carts was the motor-cycle with three persons. When he saw the motor cycle he reduced the speed, but the motor cycle dashed against the bullock cart and all the three riders were thrown away. According to him, the motor cycle skidded and came under his luxury bus. Therefore, it is the case of the appellants that the appellant was not at all at fault and, the finding of the tribunal that the appellant was negligent to the extent of 80% is contrary to the record. It is this finding coupled with the quantum fixed by the tribunal, that is being challenged in this appeal.

3. So far as quantum is concerned, the age of the deceased was 30 years. The tribunal applied multiplier of 20 and, awarded

Rs.1,92,000/- including no fault liability. His dependency was taken at Rs.1,000/- per month. Therefore, Mr.Hegade, appearing for the appellants, contended that firstly the appellants could not be held liable at all in the accident. Secondly, the multiplier of 20 was wrongly applied and, therefore, alternatively the amount of compensation is required to be reduced. Thirdly, he contended that awarding interest at the rate of 12% p.a. is not proper in the circumstances and prevailing interest rate.

4. As against this, it was the case of the respondents/claimants before the tribunal that on 15th April 1987 deceased Balkrishna Gaikwad with his cousin brother were going on his motor cycle from Raigaon to Panchwad. The time was 7.30 p.m. The deceased was driving the motor cycle. They were going by left side of the road in a moderate speed. Near village Udatare, the luxury buss of the appellants came from behind and gave a forcible dash to the motor cycle and the riders of the motor cycle were thrown away and sustained injuries. The bus carried the motor cycle of the deceased up to a distance of 60 to 70 feet. Deceased Balkrishna sustained two injuries to his

head and other part of his body and died in the accident.

5. The question is, therefore, whether the findings of the tribunal regarding negligence of the appellants and holding them liable to the extent of 80% are proper? Both the parties examined witnesses in support of their contentions. On behalf of the claimants one eye witness Satish Jadhav was examined as Witness No.2 for the applicant. He has stated that on the date of accident he was going to Khandala on scooter. When he reached village Udatare, a Java motor cycle over took him and went ahead. A luxury bus of the appellants over took him and, the luxury bus was over taking Java motor cycle when it gave dash from behind to the motor cycle. The speed of the luxury bus was about 80 k.m. per hour. Both the motor cyclists were lying injured. He reported the matter to the police station. There were two persons on the motor cycle. He was contradicted with his FIR wherein he has stated that there were three persons on the motor cycle. The tribunal came to the conclusion that there were three persons on the motor cycle, that has to be accepted as true.

6. On behalf of the appellants, the driver of the bus was examined. He has stated that the bus had a governor and, therefore, he could be go beyond the speed of 60 k.m. per hour at the relevant time when the bus came near that village the speed of his vehicle was 50 to 55 k.m. per hour and then he has stated about coming of bullock carts from opposite direction and the motor cycle brushing against the bullock cart, skidding and coming under his bus. In the cross examination he replied that when the written statement or reply came to be filed he has no informed or instructed his advocate that two bullock carts were coming from Pune side. He also did not tell his advocate that the motor cycle dashed against the bullock cart and three persons were thrown away. It that is so, then the theory put forth by the witness viz. the driver of the bus, is admittedly an improvement.

7. Apart from that a perusal of the panchanama of scene of offence and the inquest panchanama of body of deceased Balkrishna will show that the theory put forth in defence by the appellants is not at all sustainable. If two

bullock carts were coming from opposite direction and the motor cycle was following them, then the motor cycle over took one of the bullock carts, but brushed against the wheel of the bullock cart and skidded on the road and, the bus at that juncture coming from opposite direction, therefore, if such an accident occurred then the persons going by motor cycle would fall on that side of the road by which the bus was coming and they would directly come under the wheel of the bus. Inquest panchanama of deceased Balkrishna shows that he had injuries on his forehead and both of his thighs were fractured. There is no injury report about the other persons sitting on the motor cycle. But looking to these injuries, the defence raised by the appellants was rightly disbelieved by the tribunal.

8. So far as spot panchanama is concerned, it shows that the bus of the appellants was in speed, may by it was high way and the buses or vehicles were usually going in speed and Java motor cycle was also in speed, but it is the question of deciding two different versions. The version given by the respondents/claimants on the basis of oral evidence of the witness and the

spot panchanama supports their theory that it was negligence of the driver of the appellants' bus.

9. The tribunal has fixed ratio of negligence between 80% that of the appellants and 20% of the deceased. I do not find any mistake in those findings and, so far as this aspect is concerned, no interference is called for.

10. Alternatively, Mr.Hegde, appearing for the appellants, contended that so far as quantum is concerned, the tribunal applied multiplier of 20. The age of the deceased as per his certificate of date of birth was 30 years at that time. According to Mr.Hegade, multiplier of 14 should have been applied at the most. There is substance in this submission. However, as rightly argued by the counsel for the respondents/claimants it is equally true that when the deceased was earning Rs.2800/- per month at the relevant time, he was serving in BOmbay and his family was at native place, the dependency was, however, taken by the tribunal at Rs.1000/-, that is totally inadequate and improper. It is true that the wife of the deceased could not file any money order copy to

show as to how much her husband was sending per month. But the family at native place would require more share of earning of the husband and not to Rs.1,000/-. So in any case if the amount of Rs.1,000/- per month is improperly taken by the tribunal then that have to be enhanced. There is no cross appeal. But the fact remains that injustice has been caused to the claimants in this regard. Therefore, in the circumstances, compensation awarded at Rs.1,92,000/- that to including no fault liability calls for no interference.

11. Thirdly, it was contended by Mr.Hegade that the future interest awarded by the tribunal at the rate of 12% p.a. is not proper. In other matters also looking to the present trend of awarding interest this Court has awarded interest at 9% p.a. Hence the following order :-

:ORDER:

The order of the tribunal is to remain as it is. However, amount of compensation will carry interest at 9% p.a. from the date of petition till recover in stead of

12% p.a.

No order as to costs.

[D.G.DESHPANDE]

06/04/2005 JUDGE.